

Internal Revenue Service

District
Director

Date: JUL 26 1991

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Employer Identification Number:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

ENCLOSURE I

[REDACTED]

A review of your application and subsequent correspondence indicates that you were incorporated in the State of [REDACTED] on [REDACTED]. Your Articles of Incorporation state that your purposes are to receive and administer funds as a philanthropic corporation and to promote goodwill and benevolence for individuals. You do not have a separate set of Bylaws.

Page 2 of Form 1023 states that you provide business services that are not available to small businesses. You will provide business, bonding and action plans, conduct seminars/workshops, and promote benevolence. You will devote one-third of your time and expenses to each activity.

You will provide managerial services and technical assistance to small businesses by using a core group of consultants with business expertise in specific areas. These consultants will be retained through a sub-contract basis for the benefit of your clients. You also plan to recruit volunteer consultants from the business community.

This activity will consist of marketing, administration and management plans. Marketing plans include consumer marketing, pricing of products, advertising and location. Administration plans include office procedure, internal control, inventory control, and new business analyses. Management plans include policies and procedures, reporting, personnel, action plans, bonding plans, and finance and accounting.

Your consulting service fee will be at the fair market value which is consistent with the United States Department of Commerce, Minority Business Development Agency, and Accounting Aid Society of [REDACTED]. You state that your \$[REDACTED] hourly rate is reasonable and competitive with a for-profit organization.

You will conduct four seminars/workshops each year on a cost basis. These seminars/workshops will be conducted in [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED], by qualified individuals.

You plan to solicit funds from private and public sources to aid persons with financial needs who fall outside of the governmental service network and who meet your criteria. You have not established any specific criteria for this fund.

Your office is located in the residence of the officers. Your officers are [REDACTED], President/Secretary, and [REDACTED], Vice President/Treasurer. You state that none of the officers will receive any compensation for their services. [REDACTED] will devote one-half time to the organization, and he is currently employed by [REDACTED]

██████████ as a manager of the External Civil Rights Program. ██████████ will work full-time for the organization, and she does not hold an outside employment.

██████████ will perform short and long range planning, develop plans and techniques, organize activities and determine who will perform services for the clients, direct and guide consultants, execute contracts, control the outcome of consultants, manage the development of plans and obtain financing and equipment.

██████████ will manage the day to day operation, pay bills, file reports, schedule seminars/workshops, handle bookkeeping and bank deposits, arrange meeting schedules and solicit funds for the benevolence activity.

Your sources of income will be from services provided to business enterprises, seminars/workshops, contracts, and gifts and grants. You also plan to obtain loans from ██████████ at ██████ percent interest rate. You have begun to solicit contracts from small businesses to develop plans and services, but you have not entered into any contracts thus far.

You did not receive any income in ██████ and none in ██████ thus far. Your proposed budgets for ██████████ show that your sole sources of income will be from business plans and workshops/ seminars. Your expenses will consist of secretarial services, telephone, office space, stationary, loan payment, computer leases (Series 286), Hewlett Packard laserjet printer leases, word perfect 5.1 and lotus 123.

About ██████ percent of your ██████ gross income and ██████ percent of your ██████ gross income will be derived from business plans. The organizer, ██████, will provide financing, space, utilities, maintenance, telephone, and equipment. You stated that the proposed budgets for ██████ and ██████ show you will operate at the deficit because of the start-up cost. You believe that the aggressive pursuit of your business activity will eliminate the deficit shown on the proposed budgets. Also, ██████████ will receive reimbursement for the expenses when your funds are available.

In your response to our letter date ██████████, you indicated that you should be exempt under section 501(c)(3) of the Code because you only spend one-third of your time and expenses on consulting services. The Revenue Ruling 72-369 which we cited does not apply to you because your consulting services do not represent 100 percent of your activities. You further state that you are a vehicle which will give a high level of specialized skills to the small businesses. You will assist small businesses to address the barrier that relates to business formation, growth, expansion, and business failure. You will assist many small businessmen who generally start their businesses with limited knowledge about operations, markets and

[REDACTED]

management techniques. You believe your assistance will contribute to overcoming these barriers which cause a large number of small businesses to fail. You state that your services are needed in the competitive environment of small businesses. Furthermore, you were formed as a philanthropic corporation to promote goodwill and benevolence for individuals.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states that the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. The "generally accepted legal sense" of the term "charitable" includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings; monuments, or works; lessening of the burdens of Government; promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tensions; to eliminate prejudice and discrimination; to defend human and civil rights secured by law; or to combat community deterioration and juvenile delinquency.

Revenue Ruling 72-369, 1972-2 CB 245, states that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 72-369 further states that the providing of managerial and consulting services on a regular basis for a fee is carrying on a trade or business ordinarily carried on for profit. The fact that the services in this ruling were provided at cost and solely for exempt organizations was not sufficient to characterize the activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the "operational test," the organization's resources must be devoted to a purpose to qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

Philanthropic and benevolent have no generally accepted legal meaning. You have not established any specific criteria for your benevolence fund; therefore, the stated purposes may permit activities that are broader than the intended by the exemption law.

Providing consulting services to small businesses at the fair market value is not a charitable activity described within the meaning of section 501(c)(3) of the Code. Your consulting service is similar to the service which is conducted by an ordinarily commercial consulting enterprise, and you are in competition with other commercial firms. Therefore, the cited Revenue Ruling 72-369 does apply to you.

Even though you stated that the officers will receive no compensation for their services, your officers will receive rental income for office space and equipment. Your proposed budgets also show that you will incur secretarial service expenses. Therefore, it indicates that there are personal motives involved.

Based on the information submitted, you are not an organization described in section 501(c)(3) because more than an insubstantial amount of your activities is neither educational, charitable, or scientific. Therefore, you do not qualify for exemption under section 501(c)(3) or any other sections of the Internal Revenue Code.

This is a denial letter.